

Document: C.R.S. 18-12-102

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Colorado Revised Statutes Annotated Title 18. Criminal Code (Arts. 1 – 26) Article 12. Offenses Relating to Firearms and Weapons (Pts. 1 – 5) Part 1. Firearms and Weapons - General (§§ 18-12-101 – 18-12-114)

18-12-102. Possessing a dangerous or illegal weapon - affirmative defense - definition.

(1) As used in this section, the term “dangerous weapon” means a firearm silencer, machine gun, short shotgun, short rifle, or ballistic knife.

(2) As used in this section, the term “illegal weapon” means a blackjack, a gas gun, or metallic knuckles.

(3) A person who knowingly possesses a dangerous weapon commits a class 5 felony. Each subsequent violation of this subsection (3) by the same person shall be a class 4 felony.

(4) A person who knowingly possesses an illegal weapon commits a class 1 misdemeanor.

(5) It shall be an affirmative defense to the charge of possessing a dangerous weapon, or to the charge of possessing an illegal weapon, that the person so accused was a peace officer or member of the armed forces of the United States or Colorado National Guard acting in the lawful discharge of his duties, or that said person has a valid permit and license for possession of such weapon.

History

Source: L. 71:R&RE, p. 482, § 1. **C.R.S. 1963:**§ 40-12-102. L. 72:P. 276, § 9. L. 73:P. 540, § 13. L.

79:Entire section R&RE, p. 729, § 10, effective July 1. L. 87:(1) amended, p. 674, § 3, effective May 16.

L. 2017:(2) amended,(SB 17-008), ch. 74, p. 234, § 2, effective August 9.

▼ Annotations

Research References & Practice Aids

Hierarchy Notes:

C.R.S. Title 18

C.R.S. Title 18, Art. 12

State Notes

ANNOTATION

Law reviews.

For article, "Mens Rea and the Colorado Criminal Code", see 52 U. Colo. L. Rev. 167 (1981). For article, "Pronouncements of the U.S. Supreme Court Relating to the Criminal Law Field: 1985-1986", which discusses a case relating to unloaded guns as dangerous weapons, see 15 Colo. Law. 1612 (1986).

Prohibition on short shotguns does not violate constitutional right to bear arms.

Section 13 of article II of the state constitution does not protect an individual's right to possess a short shotgun for self-defense. The prohibition in this section is a reasonable exercise of the state's police power. *People v. Sandoval*, 2016 COA 14, 409 P.3d 425.

The prohibition against possession of illegal weapons in subsection (4)

is neither facially void for vagueness as to the prohibition of possession of "metallic knuckles", nor unconstitutionally vague as applied to the defendant. *People ex rel. A.P.E.*, 988 P.2d 172 (Colo. App. 1999), rev'd on other grounds, 20 P.3d 1179 (Colo. 2001).

Possession of an illegal weapon under subsection (4) is a lesser included offense of possession of weapon by a previous offender under § 18-12-108 (1)

when the same weapon is alleged in each charge. *People v. Brown*, 119 P.3d 486 (Colo. App. 2004).

Whether inoperable weapon is a dangerous one is question of fact.

When a prosecution under this section involves a weapon that is inoperable for some reason, whether the weapon is a dangerous one is a question of fact. In considering this question, the trier of fact must weigh a variety of factors, including the time required, the changes that have to be made in the weapon, the parts which have to be inserted, and all the other attendant factors and circumstances. *People v. Vigil*, 758 P.2d 670 (Colo. 1988).

"A firecracker in a beer bottle"

could constitute a molotov cocktail, ergo a bomb, which under former section was an illegal weapon. Miller v. District Court, 193 Colo. 404, 566 P.2d 1063 (1977).

Defendant could not be convicted of carrying a concealed weapon without the prosecution proving that defendant intended to use a short-bladed knife as a weapon.

While the characteristics of an instrument may be an important factor in determining the intended purpose of an instrument, the language of the concealed weapons statute and established precedent establishes that a knife's design does not, by itself, prove that the person carrying it intended to use it as a weapon. A.P.E. v. People, 20 P.3d 1179 (Colo. 2001).

Applied

in People v. Taylor, 647 P.2d 682 (Colo. 1982).

Research References & Practice Aids

Cross references:

For affirmative defenses generally, see §§ 18-1-407, 18-1-710, and 18-1-805.

Colorado Revised Statutes Annotated

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